



California Integrated Waste Management Board



Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov

Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

February 27, 2003

City of McFarland
Gary M. Johnson
PO Box 1488
McFarland, CA 93250-0088

RE: Consideration Of The 1999/2000 Biennial Review Findings For The Source Reduction And Recycling Element And Household Hazardous Waste Element; And Consideration Of Issuance Of a Compliance Order Relative To The 1999/2000 Biennial Review Findings For The City of McFarland, Kern County

Dear Mr. Johnson: _____

This letter is notification that on January 14-15, 2003, the California Integrated Waste Management Board voted on the findings in the attached Resolution 2003-42 for the City of McFarland. Please see CIWMB Meetings and Agendas page at "<http://www.ciwmb.ca.gov/Agendas/>" for complete agenda item information.

We look forward to working with you as the City of McFarland implements its diversion-related programs. Should you have any questions, please contact Nikki Mizwinski of the Office of Local Assistance at (916) 341-6271.

Sincerely,

Tabetha Willmon, Central Section Supervisor
Office of Local Assistance

Attachment: Resolution No. 2003-42

California Environmental Protection Agency

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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.ciwmb.ca.gov/>.

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD**

In the Matter of:)	Tracking No: IWMA BR03-01
)	
)	
City of McFarland)	COMPLIANCE ORDER
County of Kern)	
)	
)	Public Resources Code
Jurisdiction)	Section 41825

INTRODUCTION

- 1.1 **Parties:** The California Integrated Waste Management Board (Board) issues this Compliance Order (Order) to the City of McFarland (City), County of Kern.
- 1.2 **Authority:** Section 41825 of the Public Resources Code (PRC) requires the Board to review implementation of each Jurisdiction's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE), at least once every two years; this Biennial Review is the Board's independent evaluation of a Jurisdiction's progress in implementing the SRRE and HHWE selected programs and reaching the diversion requirements of PRC Section 41780. If a Jurisdiction is not meeting the mandates of the Integrated Waste Management Act (IWMA), the Board may issue a compliance order and schedule (PRC Section 41825). Fines of up to \$10,000 per day may be levied if the provisions of the compliance order and schedule are not met (PRC Section 41850).
- 1.3 Sections 41033 and 41333 of the PRC, respectively, provide that any waste characterization component prepared by a Jurisdiction pursuant to Sections 41030 or 41330, and any other information submitted by a Jurisdiction to the Board on the quantities of solid waste

generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the Board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (1) of subdivision (a) of Section 41780.

DETERMINATION OF COMPLIANCE DEFICIENCIES

- 2.1 Board staff conducted a Biennial Review of the City's SRRE. After considering the results of this review and the adoption of this Order at a public hearing commencing on January 14-15, 2003, the Board determined:
- 2.2 The Jurisdiction failed to comply with PRC Section 41825 in that it failed to adequately implement programs listed in its SRRE that target significant portions of the City's waste stream. In addition, the Jurisdiction failed to comply with PRC Section 41780 in that it did not meet the solid waste diversion requirement of 50 percent by 2000. The Jurisdiction's diversion rate in 2000 was 34 percent.
- 2.3 The Jurisdiction failed to demonstrate that it made a good faith effort in implementing its SRRE in accordance with PRC Section 41850. The Jurisdiction did not provide information to indicate that it had made all reasonable and feasible efforts to implement its SRRE or alternative programs that achieve the same or similar results.

SCHEDULE FOR COMPLIANCE

- 3.1 Based on the foregoing determination of compliance deficiencies, it is hereby ordered that the City shall:
- a. Work with the Office of Local Assistance staff to determine gaps in program areas and make recommendations in improving, expanding, or implementing new diversion programs. OLA staff will conduct a needs assessment meeting with the City and outline the scope of a local assistance plan. The City will agree to the local assistance plan by June 30, 2003.
- 3.2 **Penalties:** At the end of the compliance order, the Board shall hold a public hearing to determine whether or not the Jurisdiction has complied with Section 3.1 of this Order. Failure to comply with any part of the Compliance Order at any time may result in fines of up to (\$10,000) per day in accordance with PRC Section 41850(a). A public hearing may be scheduled earlier if the Board determines that the Jurisdiction has complied with the conditions of the Order ahead of schedule.
- 3.3 **Submittals:** All documents required to be submitted by the Jurisdiction as noted above shall be sent to:
- Nikki Mizwinski
Office of Local Assistance, MS 25
California Integrated Waste Management Board
1001 I Street, P.O. Box 4025
Sacramento, CA 95812**
- Attn: Compliance Order Correspondence**
- 3.4 **Communications:** All approvals and decisions of the Board made regarding the adequacy of submittals will be communicated to the Jurisdiction in writing by the Board or its designee. No informal advice, guidance, suggestions, or comments by the Board staff regarding reports,

plans, schedules, or any other documents submitted by the Jurisdiction shall be considered to be Board approvals.

- 3.5 Board Review and Approval: If the Board determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to achieve successful implementation of the SRRE, the Board or its designee may:
- a. Serve a notice that the Board will hold a public hearing to consider the imposition of penalties in accordance with PRC Section 41850, or
 - b. Order the Jurisdiction to change the document (if there are major changes) as deemed necessary and approve the document as changed, or
 - c. Return the document to the Jurisdiction with recommended changes (if there are minor changes) and a date by which the Jurisdiction must submit to the Board the document incorporating the recommended changes.
- 3.6 Compliance with Applicable Laws: The Jurisdiction shall carry out this Order in compliance with all Local, State, and Federal requirements, including but not limited to requirements to obtain necessary permits.
- 3.7 Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of the Jurisdiction.
- 3.8 Government Liabilities: The State of California and the Board shall not be liable for injuries or damages to persons or property resulting from acts or omissions in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by the Jurisdiction or its agents in carrying out activities pursuant to the Order.

The Jurisdiction shall indemnify, defend and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting in connection with the performance of this Order.

- 3.9 Extension Request: If the Jurisdiction is unable to perform any activity or submit any document within the time required under this Order, the Jurisdiction may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.10 Extension Approvals: If the Board or its designee determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.
- 3.11 Parties Bound: This Order shall apply to and be binding upon the Jurisdiction and upon the Board and any successor agency (regional agency etc.) that may have responsibility for, and the Jurisdiction over, the subject matter of this Order.

EFFECTIVE DATE

- 4.1. This Order is final and effective from the date of issuance.

Date of Issuance January 14, 2003

Linda Moulton-Patterson

Linda Moulton-Patterson, Chair
California Integrated Waste Management Board

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2003-42

Consideration Of The 1999/2000 Biennial Review Findings For The Source Reduction And Recycling Element And Household Hazardous Waste Element; And Consideration Of Issuance Of A Compliance Order Relative To The 1999/2000 Biennial Review Findings For The City Of McFarland, Kern County

WHEREAS, Public Resources Code (PRC) Section 41821 requires a jurisdiction to annually submit to the Board by August 1 a report on its progress in implementing its Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element and in achieving the diversion requirements of PRC Section 41780; and

WHEREAS, PRC Section 41825 requires the Board to review each City, County, and Regional Agency's (jurisdiction) SRRE and HHWE at least once every two years; and

WHEREAS, by conducting the Biennial Review in accordance with Title 14 California Code of Regulations Section 18772 based in large part on a jurisdiction's annual reports, the Board will determine if a jurisdiction has implemented its SRRE and HHWE programs, and if a jurisdiction is meeting the diversion requirements as specified under PRC Section 41780; and

WHEREAS, PRC 41850 allows the Board to consider "good faith efforts" made by jurisdictions to implement their SRREs; and

WHEREAS, the City of Mc Farland (City) agreed to submit a complete Petition for Reduction, (PFR) application within 60 days of notification; however, its application was incomplete; and

WHEREAS, the City was given an additional 30 days to resubmit a complete application; however, the City was unable to submit a complete PFR; and

WHEREAS, in the absence of a complete PFR application, Board staff conducted a Biennial Review of the City's SRRE and HHWE, and believes the City has failed to adequately implement its SRRE programs to achieve the 50 percent diversion requirement for 2000, but has adequately implemented its HHWE; and

WHEREAS, the City failed to demonstrate that it made a good effort in implementing its SRRE in accordance with PRC Section 41850 and did not provide information to indicate that it had made all reasonable and feasible efforts to implement its SRRE or alternative programs that achieve the same or similar results; and

(over)

WHEREAS, PRC Section 41825 allows the Board to issue a compliance order to a jurisdiction determined to have failed to implement its SRRE and/or HHWE after conferring with the jurisdiction with its intent to issue a compliance order at least 60 days prior to issuing a notice of intent to issue a compliance order; and

WHEREAS, PRC Section 41825 requires the Board to notify a jurisdiction of its intent to issue an order of compliance at least 30 days prior to holding the hearing to consider issuing the compliance order; and

WHEREAS, Board staff has conferred with the City at least 60 days prior to issuing a notice of intent to issue a compliance order, and has notified the City at least 30 days prior to this Board hearing where the item considering issuing the City a compliance order was heard;

NOW, THEREFORE, BE IT RESOLVED, that the Board finds that the City has failed to implement its SRRE as required, and hereby adopts the attached compliance order.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board accepts staff's 1999/2000 Biennial Review findings that the City has adequately implemented its HHWE.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on January 14-15, 2003.

Dated: January 14, 2003

ORIGINAL SIGNED BY

Mark Leary
Executive Director

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2003-401

Consideration Of A Request to Extend The Due Date For Finalization Of The Compliance Order Workplan For The City Of McFarland, Kern County

WHEREAS, in accordance with Public Resources Code (PRC) Section 41825, the California Integrated Waste Management Board (Board) conducted a Biennial Review of the Source Reduction and Recycling Elements (SRREs) for the City of McFarland and adopted a Compliance Orders based on the Jurisdiction's lack of sufficiently implementing the diversion programs identified in its SRRE, and not meeting the 50 percent diversion requirement; and

WHEREAS, as part of the Compliance Order issued to the Jurisdiction, the Board's Office of Local Assistance staff worked with the Jurisdictions staff to develop a work plan outlining new and expanded programs to be implemented by the City and associated due dates; and

WHEREAS, Compliance Orders issued to the Jurisdiction allows them to request an extension, if the Jurisdiction is unable to perform any activity within the time required by this order; and

WHEREAS, the Jurisdiction has requested and provided justification for an extension in submitting their signed work plan, and Board staff recommends approval of the extension; and

NOW, THEREFORE, BE IT RESOLVED that the Board approves the City of McFarland's request for an extension to August 31, 2003 to submit a signed work plan as outlined in their compliance order.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on July 15-16, 2003.

Dated: July 15, 2003

ORIGINAL SIGNED BY

Mark Leary
Executive Director